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**AN INTEGRATED LAW CURRICULUM: ACHIEVING HIGHER EDUCATION
LEARNING OUTCOMES IN LAW THROUGH CURRICULUM DESIGN
INTEGRATING VARIED LEARNING EXPERIENCES APPROPRIATE TO THEIR
ACHIEVEMENT**

Jonny Hall*

Abstract: This article will explore the design of a law curriculum in any jurisdiction which might more closely achieve the range of outcomes expected of study (and therefore also legal study) in higher education. It is an argument calling for the integration of varied learning experiences across and within the years that students spend studying law. One which recognises the place for more traditional modes of learning and teaching directed at knowledge and understanding of legal principles and legal analysis (domain knowledge) while calling for the integration of inquiry based and other experiential learning approaches. This integration should take place within more traditionally taught areas of the curriculum; recognising the role that inquiry based and experiential learning approaches might play. The author also advocates a core thread throughout the curriculum where inquiry based and experiential learning approaches are emphasised.

Keywords: *curriculum design; developmentally appropriate learning experiences; cognitive load; experiential learning; legal education outcomes*

I. Introduction

While different countries express higher education learning outcomes in a variety of ways, and law is studied at a variety of levels it will be argued that the following are generally applicable: competence; managing emotions; mature interpersonal relations; autonomy; problem solving and making decisions; establishing identity and developing integrity¹ in the context of being passionate about content, and learned about a subject.²

The first part of this article explores the proposition that these areas of knowledge, skills and attributes are best developed and interwoven throughout the learning experience. The article will advocate a central place for experiential and inquiry based learning in legal study. However, key questions remain about how this integration is to be achieved – should we attempt wholesale implementation, as occurred in the case of problem based learning in some parts of medical education in the US and law at a limited number of institutions³ – or a different approach that finds space for experiential and inquiry based learning approaches in the curriculum alongside and within more traditional ones. In the case of the latter, how are we to determine how these approaches are integrated?

Integration of approaches that might enhance the acquisition of certain graduate characteristics with more traditional ones draw concerns (and the potential for an either/or position as Dewey described it) about the ways in which learning effectively takes place.

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¹ Arthur Chickering, *Education and identity*. (San Francisco: Jossey-Bass, 1969).

² John Hattie, "Teacher-ready research review. The Applicability of Visible Learning to Higher Education" (2015) 1:1 *Scholarship of Teaching and Learning in Psychology* 79.

³ Maastricht in the Netherlands and York University in the UK are the only two of which the author is aware.

Dewey termed this “the opposition between the idea that education is development from within and that it is formation from without.”⁴

Dewey advocated learning from experience (indeed the theory that all genuine education arises from personal experience) but recognised the importance of organising subject matter within the experience and the guidance of the mature person (potentially an expert) while maintaining the principle of learning from experience.⁵

The history of many experiential and inquiry based learning approaches over the last 50 years has been to attempt to achieve this objective. To organise student centred inquiry learning through exploration of problems, subject matter, and experiential learning with the guidance of facilitators (be they experts or not).

Set against this is the concern that until basic principles have been imparted (usually this is advocated through more instructional processes) inquiry based and experiential approaches (clinical ones especially) are not only liable to be ineffective but even potentially counterproductive. It is the contention of the author that while there are undoubtedly issues with attempting to learn through experience and inquiry when domain knowledge is at an early stage, a carefully designed curriculum that utilises both more traditionally structured and didactic modes and experiential and inquiry based modes will more fully develop all of the desired learning outcomes. At the same time, the article will explore law curriculum design that acknowledges the possibility of both strong and weak framing (“the degree of control teacher and pupil possess over the selection, pacing and timing of knowledge transmitted in the pedagogical relationship,”⁶) and strong and weak classification (the extent to which the contents in the curriculum stand in closed or open relation to each other⁷).

The second part of the article reports on a case study of a curriculum intended to be integrated and an exploration of whether the ambitious learning outcomes proposed in a final year clinical legal education element of the curriculum was enacted and experienced in ways which were aligned to the outcomes intended. This involves the important recognition that the curriculum as intended is not that which is enacted or inevitably experienced.⁸

II. Part 1

A. *Higher education study is about more than knowledge, understanding and the ability to analyse legal situations in de-contextualised environments*

Law as a programme of study at undergraduate or postgraduate level varies across jurisdictions and it should be acknowledged that legal study can be for the purpose of achieving a liberal arts degree,⁹ a liberal arts degree enabling some students to become legal professionals or a professional degree directed solely at becoming a legal professional. However, it is

⁴ John Dewey, *Experience and Education* (Kappa Delta Pi Lecture Reprint, Touchstone Edition, New York: Touchstone, 1997) 17.

⁵ *Ibid.*

⁶ Basil Bernstein, *Class, Codes and Control Volume III Towards a Theory of Educational Transmissions* (New York: Routledge & Kegan Paul Ltd, 1975).

⁷ *Ibid.*

⁸ Stephen Billett, “Constituting the workplace curriculum” (2006) 38:1 Journal of Curriculum Studies 31.

⁹ There is much debate concerning what a liberal arts degree is within the context of law: Anthony Bradney, *Conversation, Choices and Chances: The Liberal Law School on the Twenty-First Century* (Portland: Hart Publishing, 2003). Ashford and Guth call for a recognition that learning of professional knowledge and skills might be acquired because they facilitate or come with the wider learning that constitutes a liberal education. Chris Ashford and Jessica Guth, “The Legal Education and Training Review: regulating socio-legal and liberal legal education?” (2014) 48:1 The Law Teacher 5.

becoming increasingly the case that the expectation of outcomes for students across jurisdictions is recognising the need for a broad and deep interpretation of the knowledge, skills and attributes of those graduating in law. There are obvious differences where the requirement includes practical legal qualifications and/or is at a postgraduate level but it is proposed that many of the broader qualities are aligned. Examples of these developments are set out below.

The QAA for England and Wales subject Benchmark for law (2015)¹⁰ was substantially revised to reflect a move to a broader understanding of the achievement of an undergraduate law degree: “a law graduate is far more than a sum of their knowledge and understanding.”¹¹ This requires law schools to develop students as knowledgeable both in terms of the theory of the discipline and the process of knowledge construction within it, intellectually independent, reflective, self-directed, critical, collaborative and articulate learners possessing academic integrity and aware of the principles and values of law and justice. The benchmark statement advocates the adoption of a broad number of teaching practices in order to achieve these outcomes. For good reason, the selection and balance of such practices are left to individual universities but this does leave a fundamental question as to how to balance and sequence these very different forms.

In Australia, the Australia Qualifications Framework¹² using different terminology requires graduates with a bachelor’s degree in any discipline to possess and demonstrate very similar knowledge, skills and attributes to those expressed by the QAA. In Canada, the Canadian Qualifications Framework recognises the predominant law degree qualification (juris doctor) as a bachelors level qualification,¹³ and its prescription for all bachelor’s level qualifications again reflects very similar outcomes. In the United States, students study law predominantly as a three year postgraduate programme of study intended to enable them to become legal professionals. Understandably, The influential review conducted by the Carnegie Report on Legal Education¹⁴ focused arguably more narrowly upon the need to develop students’ knowledge of legal doctrine and the necessary analytical skills (which it commended the case-dialogue method prevalent in the US for achieving) and two (in the view of the report) less well achieved objectives of the introduction to legal practice leading to acting responsibly for clients and assumption of professional identity and values. In identifying the latter two areas for improvement, the report concluded that a more integrated approach to achieving these objectives should be taken:

“students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis. Law schools face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity.”¹⁵

¹⁰ Quality Assurance Agency, “Subject Benchmark: Law (2015)” (The Quality Assurance Agency for Higher Education, July 2015). <www.qaa.ac.uk/publications/information-and-guidance/publication?PubID=2966#.WsYstkxFw2w> (accessed 20 March 2018).

¹¹ Ibid.

¹² Australian Qualifications Framework Council, “Australian Qualifications Framework Second Edition January 2013” (Australian Qualifications Framework Council, 2013) <www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf> (accessed 20 March 2018).

¹³ Council of Ministers of Education (Canada); Conseil des Ministres de l’Education (Canada) “Ministerial Statement on Quality Assurance of Degree Education in Canada” (2007) <www.cmec.ca/Publications/Lists/Publications/Attachments/95/QA-Statement-2007.en.pdf> (accessed 20 March 2018).

¹⁴ William Sullivan, et al., *Educating Lawyers, Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

¹⁵ Ibid., 8.

Across these jurisdictions therefore, there appears to be a movement toward a broader understanding of the law graduate. Pryor and Croussard¹⁶ argue more generally that traditional university teaching has remained wedded to notions of knowledge transmission and formative assessment being utilised instrumentally to fix problems with knowledge transmission and receipt. They argue for a shift from learning “as primarily a process of storing and reproducing knowledge towards its broader conceptualisation as a process of ‘coming to know in different situations’.”¹⁷

B. The process of coming to know in different situations

Bernstein offered a lens on curriculum approaches that is useful in considering approaches which favour knowledge transmission and receipt as opposed to the broader objectives of “coming to know” through his conception of classification and framing.

Bernstein developed the concept of strong and weak classification (the extent to which the contents in the curriculum stand in closed, strong, or open, weak, relation to each other¹⁸). Bernstein argued that traditional curricula involve subjects of study that stand in a closed relation to each other and by contrast in an integrated curriculum the contents stand in an open relation to each other.¹⁹ In an Integrated curriculum, Bernstein argued that in order to achieve open relation between the contents, the focus necessarily is upon general principles and this leads to emphasis “on ways of knowing rather than states of knowledge.”²⁰ Traditional law curricula focus upon strong classification in which subjects stand in closed relation to each other. For example, contract law might be studied without reference to procedural law relating to it or without reference to those principles in property or employment law. Students emerging from such curricula find it notoriously difficult to make connections between the subjects studied in these previously strongly classified study units and the complex, messy problems frequently encountered in real life.

Traditional law curricula are also strongly framed. “Frame refers to the degree of control teacher and pupil possess over the selection, organization, pacing and timing of the knowledge transmitted and received in the pedagogical relationship.”²¹ Strong framing undermines the opportunity for autonomy for the student. If the lecture seminar cycle typical in UK legal education is prevalent, the student is taken on a journey that has been predetermined, focussed around knowledge transmission, the setting of tasks to enable the student to come to an understanding and a series of seminars in which the student applies the reading to resolve pre-ordained solutions to legal problems in order to reach a better understanding of legal doctrine and its application to factual situations. While the case-dialogue method in the United States and the lecture problem seminar prevalent in the UK may be effective at developing domain knowledge and application, experiential and inquiry based learning approaches may be more effective in developing learning outcomes increasingly identified for students.

The process of coming to know in different situations also includes students developing self-directed learning attributes, understanding the process of knowledge construction in the legal discipline and having an awareness of law in the context in which it is actually lived by them and others professionally and societally. The development of these attributes in highly traditional curricula is either neglected wholly or marginalised in optional or extra-curricular

¹⁶ John Pryor and Barbara Crossouard, “A socio-cultural theorisation of formative assessment” (2008) 34:1 Oxford Review of Education 1.

¹⁷ Bernstein (n 6)

¹⁸ Ibid.

¹⁹ Ibid., 83.

²⁰ Ibid.

²¹ Ibid.

subjects that are not related back to the main curriculum (eg: mooting). The dissertation arguably provides some of these experiences (particularly self-directed inquiry) but as a capstone. Similarly, clinical legal education modules where students often encounter real client problems are at best treated as capstone core modules (more frequently as options or for extra-curricular credit).

C. Providing integrated curricula focused on achieving a broader range of outcomes - Problem Based Learning (PBL)

PBL is an integrated approach to the curriculum which initiates learning first through the introduction of concrete, authentic problems.²² The curriculum is structured around these complex interdisciplinary and transdisciplinary problems²³ designed to develop both domain knowledge and understanding and broader outcomes and as a replacement for didactic strongly classified large group teaching (typically the lecture or lecture seminar mode). Learning is student centred, occurs in small groups with the use of problems by students to identify and acquire knowledge through self-directed learning.²⁴ Hmelo-Silver²⁵ identifies five major goals of PBL in helping students attain, through working on authentic problems:

1. flexible knowledge
2. effective problem solving skills
3. self-directed learning skills
4. effective collaboration skills and
5. intrinsic motivation.

PBL approaches first began to be widely implemented in medical education in the 1960s in the United States.²⁶ As originally envisaged, PBL was a curriculum wide intervention though while it has certainly grown to become widespread, particularly in US medical schools, with a few notable exceptions it provides a clinical case component within a broader approach to the curriculum.²⁷ Schmidt, H.G. et al (2009)²⁸ reported that 20% of US medical schools utilising PBL consider themselves to be problem-based outright. PBL is now used as a methodology across many countries and disciplines.²⁹ A detailed explanation of this process in law as practised at York Law School in the UK has been given by Grimes.³⁰

²² David Gijbels, et al, "Effects of Problem-Based Learning: A Meta-Analysis From the Angle of Assessment" (2005) 75:1 Review of Educational Research 27.

²³ David Boud, "Problem Based Learning in Perspective" in David Boud, (ed) *Problem-based Learning in Education for the Professions* (Sydney: Higher Education Research and Development Society of Australia, 1985)

²⁴ Howard Barrows, "Problem-based learning in medicine and beyond" In Luann Wilkerson and Wim H. Gijssels (eds) *New directions for teaching and learning: Vol. 68. Bringing problem-based learning to higher education: Theory and practice* (San Francisco: Jossey-Bass, 1996).

²⁵ Cindy Hmelo-Silver, "Problem-Based Learning: What and How Do Students Learn?" (2004) 16:3 Educational Psychology Review 235.

²⁶ Robert Donner and Harmon Bickley, "Problem-based learning in American medical education: an overview" (1993) 81:3 Bulletin of the Medical Library Association 294.

²⁷ Scott Kinkade "A snapshot of the status of problem-based learning in U.S. medical schools, 2003–04" (2005) 80 Acad Med. 300.

²⁸ Henk Schmidt, et al., "Constructivist, Problem-Based Learning Does Work: A Meta-Analysis of Curricular Comparisons Involving a Single Medical School" (2009) 44:4 Educational Psychologist 227.

²⁹ Hmelo-Silver (n 25)

³⁰ Richard Grimes, "Delivering legal education through an integrated problem-based learning model – the nuts and bolts" (2014) 21:2 International Journal of Clinical Legal Education <www.northumbria-journals.co.uk/index.php/ijcle/article/view/388> (accessed 20 March 2018)

D. Criticism of learning through first encountering problems or questions

Substantial objections to this approach arise however. One such objection arises from the field of educational psychology and in particular evidence that points to the nature of human cognitive structures. Detractors from experiential and inquiry based approaches from this field argue that in order to become skilful in an area students have to possess significant levels of information about the area in their long term memory.³¹ However, in order to process information we rely upon our working memory and when we are processing novel information the capacity of our working memory is extremely limited as opposed to when we are processing information already learned when the limits of our working memory are far greater.³²

The conclusion is that while searching for new information and knowledge the learner is likely to reach the limits of their working memory very rapidly and thus, subject to this cognitive load, is unable to commit their learning to long term memory. Therefore such approaches are less efficient and effective than direct instruction.³³

In response to these criticisms, advocates of both PBL and other inquiry based approaches argue that in fact substantial scaffolding is provided to learners in these environments on a “just in time basis.” In other words when the learner realises that additional guidance or instruction is required, the facilitator provides it, possibly even on the basis of mini lectures on the topic.³⁴ There is an admission however that it remains difficult to determine the balance between direct instructional guidance and inquiry based approaches.

More recently, some cognitive load theorists themselves, while maintaining that experiential and inquiry based approaches are inferior for novice learners attempting to acquire domain-specific knowledge, have recognised that learning goals in complex learning environments (hopefully typical in higher education) are not always the acquisition of domain-specific knowledge:

“one of the consequences of this reconceptualization is abandoning the rigid explicit instructions versus minimal guidance dichotomy and replacing it with a more flexible approach based on differentiating specific goals of various learner activities in complex learning”³⁵

In this reconceptualised approach Kalyug and Singh suggest that the initial learning goal in the process might be the learner activating their existing knowledge and identifying gaps within it which might be best achieved through a process such as PBL and that when the goal is acquiring the domain-specific knowledge, the approach switches to a directly guided instruction method. An objection to such a system would be that students might quickly react to this approach by not engaging with the process in the early phase in the full knowledge that the acquisition of the domain-specific knowledge would be covered later in the process.

³¹ Paul Krischner, et al “Why Minimal Guidance During Instruction Does Not Work: An Analysis of the Failure of Constructivist Discovery, Problem-Based, Experiential and Inquiry-Based Teaching” (2006) 42:2 Educational Psychologist 75, 76.

³² Ibid.

³³ Ibid.

³⁴ Cindy Hmelo-Silver, et al., “Scaffolding and Achievement in Problem-Based and Inquiry Learning: A Response to Kirschner, Sweller, and Clark” (2006) 42:2 Educational Psychologist 99-107.

³⁵ Slava Kalyug and Anne-Marie Singh, “Rethinking the boundaries of cognitive load theory in complex learning” (2016) 28 Educ. Psychol Rev 831, 831.

E. Empirical evidence – PBL and its effect on the development of flexible knowledge and problem solving skills

Extensive research in the medical field and fields allied to medicine exists. A relatively recent pubmed search has established over 5000 references³⁶ although studies outside this field are far less numerous and even within the significant medical literature, studies have been concentrated upon the attainment of flexible knowledge, effective problem solving skills and self-directed learning skills.³⁷

While, PBL's capacity to instigate collaborative skills and intrinsic motivation remains an area for research, even the success in achieving the first three goals remains in dispute. A recent systematic review concluded that: "Very little high quality evidence exists to advocate its efficacy and subsequently justify the widespread curriculum change."³⁸ Most of these reviews conclude there is little or no evidence of effect on knowledge from PBL, although there is greater evidence for a positive relationship between PBL and the skills to apply knowledge,³⁹ more research is necessary on self-directed skills.

F. Scaffolding Learning – providing an integrated curriculum

It is not necessary for curriculum designers to adopt an either/or stance of course in relation to a divide between instruction and experiential and problem or inquiry driven approaches. This author accepts that direct instruction can be more efficient in developing knowledge and understanding in certain circumstances, particularly when the learner is a novice. Sometimes this will mean that areas of the curriculum will be designed which are strongly classified and framed.

So, rather than seek to provide a wholly instructional or wholly experiential and problem or inquiry driven curriculum, the key is to provide integration of these approaches within modules and between modules. It is possible to effectively design learning in which the problem comes first but the students receive significant scaffolding. This scaffolding may actually amount to instruction shortly after the problem analysis by the students (a mini lecture for example). It is also possible within otherwise strongly classified and framed modules to provide inquiry based and experiential approaches as well. This can take place in a variety of ways, for example, a first year module on contract law could be effectively strongly classified and framed but take a different approach at the conclusion of the course when approaching an area such as remedies. With sufficient existing knowledge concerning contractual principles and sources, instead of a highly structured and instructional approach on remedies, a PBL scenario could be set for students to work in groups with an authentic contractual dispute where the critical legal issue concerns the applicable remedies available and in which the problem would also drive students to enquire into procedural issues and perhaps experience an alternative form of dispute resolution through the form of a roleplay mediation – which would highlight differences but also connections between what may be technically legally available and what is in the interests of the parties in the actual situation.

³⁶ Schmidt, et al (n 28)

³⁷ Hmelo-Silver (n 25)

³⁸ Ioannis Polyzois, et al., "Problem-based learning in academic health education. A systematic literature review" (2010) 14:1 European Journal of Dental Education 55.

³⁹ Filip Dochy, et al., "Effects of problem-based learning: a meta-analysis" (2013) 13 Learning and Instruction 533.

A variant on this which the author has personally experimented with concerns a year in which students were learning about torts, civil litigation and public law. Tort and civil litigation were already weakly classified with an integration of one of the simulated problems in the litigation module (a personal injury case) with the relevant principles in Tort. However, the framing was strong. Traditional approaches were taken to teaching using instruction (the lecture and seminar mode) were taken. An innovation for the latter part of semester 2 was to introduce a simulated client interview raising issues the students had not met in detail on the Torts module (assault and battery and false imprisonment); public law issues concerning rights of assembly and a relatively narrow litigation issue relating to damages in such cases. Students explored this through a PBL approach with tutors from all three subject areas facilitating the PBL sessions.

Key issues remain however. Firstly, is an integrated curriculum simply to be achieved through offering PBL and some simulated experiential learning approaches in a mixed diet with the traditional curriculum? Perhaps with a clinical legal education capstone? PBL and the use of carefully structured authentic problems that students are able to explore, identify gaps in their learning and seek out new learning from can encourage self-directed learning, but that of itself is not sufficient – more work is necessary on how self-directed learning might be supported within a PBL environment. In any event, the author argues that adopting PBL alone does not facilitate a curriculum intended, still less enacted or experienced, to develop the broad learning outcomes in higher education. PBL offers a relatively strongly framed approach in which the PBL cycle is set in terms of its pace and timing, with less control for the student than might be supposed; and the learning outcomes for the student tend to have been preordained by the tutor at the outset. This is a necessity given the fact that the PBL programme is designed to provide students with a flexible knowledge base and therefore, certainly in a profession such as medicine, the PBL problems have to be carefully designed to meet knowledge outcomes necessary in the medical profession. This is largely true also in most legal jurisdictions where the law degree is part of the qualification process for becoming a legal professional.

The difficulty with the need to rely upon PBL to provide specified domain knowledge outcomes is that this may militate against giving true freedom to explore knowledge. In medicine, a study of students at a PBL medical school moving from undergraduate to clinical clerkships reported “Student learning in the clerkships appears to be driven by curiosity and exploration. They want to understand the patient problem. By contrast, they perceive their learning during the preclinical years as passive acquisition of knowledge, despite the problem-based system.”⁴⁰

The problems set may have some authenticity and be weakly classified, they still tend towards a simplified summary account, often lacking the uncertainty of real life situations. They do not tend to be combined with professional role experiential situations. The study referred to above also concluded “Students reported that the paper cases that were used in the tutorial groups in the first four years did not resemble the problems they saw in practice. The patients were real and alive and no paper case could ever simulate the emotions shown by these ill people. Indeed students proposed that more contacts with real patients should be scheduled earlier in the curriculum.”⁴¹

G. A curriculum with Inquiry Based Learning (IBL) at its heart offers a more nuanced, flexible and richer alternative framework to PBL (with PBL as an element of IBL)⁴²

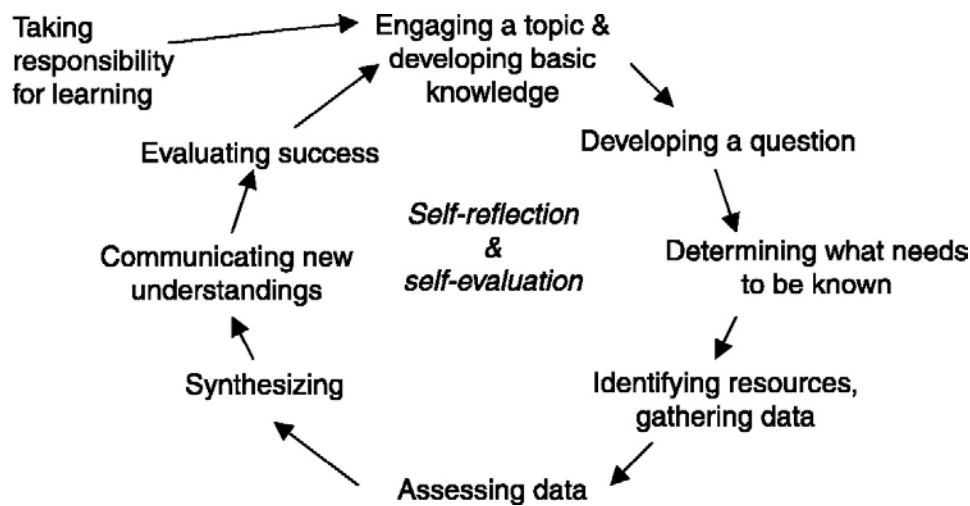
⁴⁰ Katinka Prince, et al. “A Qualitative Analysis of the Transition from Theory to Practice in Undergraduate Training in a PBL-Medical School” (2000) 5 *Advances in Health Sciences Education* 105.

⁴¹ Ibid.

⁴² Rachel Spronken-Smith and Rebecca Walker “Can inquiry-based learning strengthen the links between teaching and disciplinary research?” (2010) 35:6 *Studies in Higher Education* 723.

IBL is a form of experiential learning which arose out of the desire to provide student centred teaching and to connect teaching with research in universities.⁴³ Definitions of IBL are various but united in the concept that IBL is question or problem driven.⁴⁴ Key additional characteristics have been proposed: the questions or problems require the seeking out of new knowledge and understanding and in an environment in which teachers act as facilitators. Some refer to IBL as mimicking how research is conducted in a discipline but recognise that the knowledge sought and constructed may be new to the student while not being new to humankind.⁴⁵

Table 1 Inquiry Cycle⁴⁶



Adimoto et al,⁴⁷ surveyed academics in universities across Australia and obtained self-reported descriptions of IBL activities from 224 academics. The review identified several categories of IBL indicating a much more fluid approach to the scope of IBL and its setting, from specific short activities incorporated in a single session to large-scale ambitious projects.

Scholarly research.	Students identifying questions, collecting and analysing data. Closest to academic research.
Simplified research.	Similar to the above but usually specifying the questions in advance and providing mini-tasks rather than the whole

⁴³ Ibid., 724

⁴⁴ Anindito Aditomo et al., "Inquiry-based learning in higher education: principal forms, educational objectives, and disciplinary variations" (2013) 38:9 Studies in Higher Education 1239.

⁴⁵ Spronken-Smith and Walker (n 42).

⁴⁶ Rachel Spronken-Smith, et al "Where Might Sand dunes be on Mars? Engaging Students through Inquiry-based Learning in Geography" (2008) 32 Journal of Geography in Higher Education 71.

⁴⁷ Aditomo (n 44).

An Integrated Law Curriculum

Applied research.	Students conduct simplified research aimed at solving practical problems
Simplified applied research	Similar to applied research but based upon data already provided.
Literature based enquiry.	No primary data collection. Students are given tasks of finding and reviewing the available literature
Enactment of Practice.	Students carry out inquiry to enact roles to provide a service to real or imagined clients (clinical legal education would therefore fit within this definition) or produce/create real or tangible artefacts
Role playing.	Similar to the above but students play a specified role to provide service in a role play situation
Discussion based inquiry	Teacher-led discussions of research
Learning outcomes often associated with IBL	Development of self-regulated learning skills Cognitive skills including critical thinking and problem solving Communication and collaboration skills Spirit of inquiry and thinking critically and reflexively about the process of the production of knowledge Increasing research capabilities

Aditomo et al⁴⁸ recognised the concerns of others in relation to IBL, and found those concerns justified in their review, that much of IBL is not scholarly research and does not always appear to take the form of academic inquiry that builds new knowledge for humankind. However, they argued that tasks for undergraduate students can be set in ways that allow students to undertake parts of knowledge-building or knowledge-work akin to that undertaken by academics. They conclude that IBL is important not only for future academics but future professionals enabling them to inquire, make judgements based on evidence and understand what they are doing.⁴⁹

This description of forms of IBL and disciplinary variations is helpful and prompts questions for legal academics concerning the category Enactment of Practice. This is a very broad term and the nature of the IBL taking place in such situations can be hugely diverse as illustrated in table 2 below in relation to Mooting and simulated client interviewing currently typical on the England and Wales Legal Practice Course. Further conceptual work on the links between professional practice inquiries (for example fact gathering in a legal professional environment) and IBL might establish a clearer place for the study of applied disciplines such as law and business within the framework.

Mooting can be traced back to early legal education as part of the Inns of Court of the English and Wales Bar.⁵⁰ Its basis is in simulated advocacy on points of law in a case before a simulated court (usually at appellate level). It continues in legal education in the form of compulsory, optional and extra-curricular modules. It can be found in many countries including India, Croatia, Australia, the UK, Canada and the US to name a few.

In his review of three Queensland law schools, Lynch discovered that in one law school the moot was designed specifically to replicate some aspects of legal practice and not confined to one area of law. The objective being to engage students in research and advocacy skills,

⁴⁸ Ibid., 1255.

⁴⁹ Ibid.

⁵⁰ Andrew Lynch, "Why Do We Moot - Exploring the Role of Mooting in Legal Education" (1996) 7:1 Legal Education Review 69.

whereas in the two other schools' moots the focus was upon subject areas currently under study. However, Lynch observed that in all cases students had to construct knowledge from their research and in preparation for and enactment of legal argument.⁵¹ The process of responding to the problem posed was at least equal to the solution reached⁵² (the process of coming to know is as important as the state of the knowledge).

By contrast, simulated client interviewing assessments in England and Wales for the Legal Practice Course, will tend to be based around areas of law studied previously in detail by the student. The object of the assessment is to assess the students' ability to establish a professional relationship, obtain relevant and accurate information using appropriate listening and questioning techniques and advise a client taking into account their objectives and priorities addressing all relevant issues while identifying all possible courses of action and their consequences, costs benefits and risks.⁵³

Table 2 Enactment of Practice – Mooting and Interviewing Tasks

Enactment of Practice	Role Enacted	Nature of Inquiry	Level of Instruction	Framing and Classification
Mooting – a modified form of appellate court work	Appeal Advocacy	Research into existing case and statute law, application of given data to that law and construction of argument. Note however, that the facts and forum for knowledge construction and understanding are already determined	May have been preceded by more traditional domain instruction on the areas covered or may be on points or areas of law not yet studied	Framing is weak. Students have freedom to explore the area at their pace. The strength of classification is dependent upon the nature of the moot problem set. Some moot problems will be firmly set within one area, for example contract law, while others may cross boundaries
Simulated interviewing and advising task	Interview and advice	Gathering simulated data in the form of obtaining the client's narrative, analysing that data and applying existing understanding to suggest solutions and advise the client. Would this belong in 'simplified applied research'?	Usually preceded by traditional domain instruction on law and process	Framing is both strong and weak. The parameters of the client interview are set but the student controls the manner and pace of the interview. The strength of classification tends to be strong – problems are typically set within one subject area

It should be clear from the above analysis that elements of IBL are already present in the curriculum. A further example is worth considering here. The Langdellian case study

⁵¹ Ibid., 77.

⁵² Ibid., 79.

⁵³ Solicitors Regulation Authority, "Legal Practice Course Outcomes 2011" (Version 2, September 2011) <www.sra.org.uk/students/lpc.page#outcomes> (accessed at 6 April 2018)

method⁵⁴, still pre-eminent in US law schools, is intended as a method by which students learn a doctrine through study of selected appellate cases in which the principles are embedded. This method is of itself necessarily a part of the process of analysing primary material for the purposes of constructing the students' own knowledge and understanding of legal principles. It is therefore a form of IBL. Objections to this method arise not from the basis that this does not represent an element of the construction of legal knowledge in a common law system but rather that it represents only one dimension. Many of the other dimensions are treated as fixed or barely considered: the legislative dimension, the institutional dimension for resolution (fixed as the appellate court), the facts of the case (generally treated as decided already at the appellate level), the social and economic factors are largely underplayed.⁵⁵ The challenge for curriculum designers is to design curricula that achieve more of these dimensions, not necessarily reject the case method as a part of the curriculum. Indeed arguably, the case method features too little in some curricula (certainly at some institutions in England Wales).

When designing the curriculum to integrate IBL processes it is of course necessary to design a progressive approach which include research oriented practice. That is, students learning about research processes and problems⁵⁶ as well as undertaking research. Students cannot be expected to undertake research inquiry without understanding the nature and processes of research. Of course, many law schools contain courses which are intended to develop students' knowledge of research process. Legal Research, Writing and Analysis courses in the United States are a good example of the recognition of the need to develop this understanding. There has been criticism however, that these are traditionally divorced from the doctrinal and clinical parts of the curriculum, relegated to a secondary function and not integrated within it.⁵⁷

H. A Framework for IBL for use by the curriculum designer

Levy and Petrulis⁵⁸ propose a framework through which to conceptualise various approaches to IBL. This framework could be use by those designing a curriculum intended to progressively develops IBL throughout and might help achieve a curriculum in which more traditional domain knowledge oriented modules might still recognise and integrate elements of IBL.

Central to the conceptualisation of this approach is distinguishing between IBL approaches which build new knowledge and those exploring existing knowledge. Levy and Petrulis in their framework distinguish this but also incorporate a distinction between inquiries which originate from the student and those emanating from the tutor or an external party. The framework also allows for the differing levels of support offered within the inquiry.

⁵⁴ Christopher Columbus Langdell, *A Selection of Cases in the Law of Contracts* (Boston: Little, Brown and Company, 1871).

⁵⁵ Todd Rakoff and Martha Minow, "A Case for Another Method" (2007) 60 Van. L. Rev. 597.

⁵⁶ Mick Healey and Alan Jenkins, "Developing students as researchers" in Simon K Haslett and Hefin Rowlands (eds) *Linking Research and Teaching in Higher Education* (Proceedings of the Newport Nexus Conference, Newport: University of Wales, Centre for Excellence in Learning and Teaching Special Publication, 2009) 7.

⁵⁷ Michael Millemann and Steven Schwinn "Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year" (2006) 12 Clinical Law Review 441, 470.

⁵⁸ Phillippa Levy and Robert Petrulis "How do first-year university students experience inquiry and research, and what are the implications for the practice of inquiry-based learning?" (2012) 37:1 Studies in Higher Education 85.

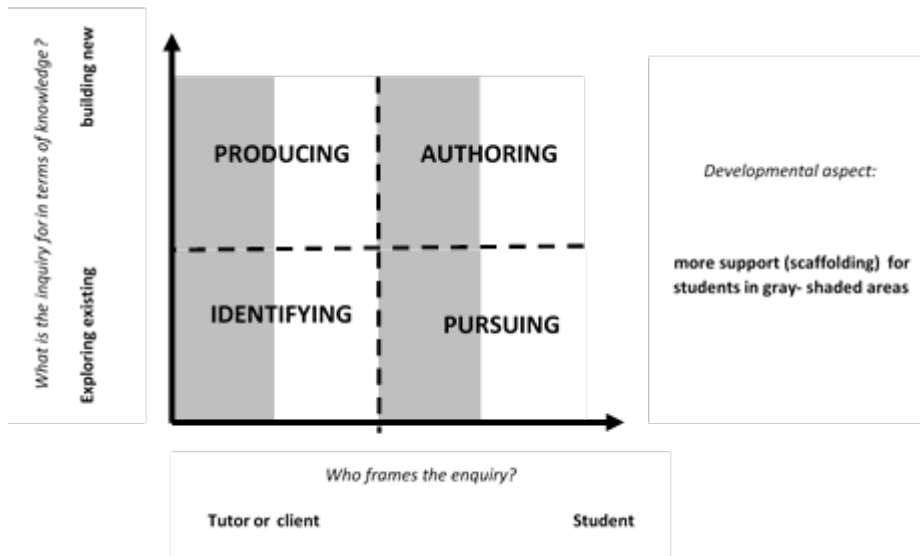


Figure xx, Framework to explore the nature of the learning experience drawn from Levy and Petrulis⁵⁹

Levy and Petrulis describe the four kinds of activity thus:⁶⁰

1. Identifying: Inquiry tasks are designed to encourage students to explore a *knowledge base* actively in response to questions... *framed by teachers*. ('what is the *existing* answer/response to *this* question?')
2. Producing: Inquiry tasks are designed to encourage students to explore *open questions*... framed by.. *others*.. in interaction with a knowledge base ('how can *I* answer *this* open question?')
3. Pursuing: Inquiry tasks are designed to encourage students to explore a *knowledge base* actively by pursuing *their own* questions. ('what is the *existing* answer/response to *my* question?')
4. Authoring: Inquiry tasks are designed to encourage students to explore their own open questions.... In interaction with a knowledge base ('how can I answer *my* open question?')

Examining the existing curriculum utilising this framework produces interesting insights into curriculum design and experiences for students. For example, is the traditional dissertation an 'authoring' inquiry or is it related to 'pursuing'? Most undergraduate law dissertations will probably involve the student exploring their own open question with less directed support from the faculty but to what extent do we expect them to build new knowledge and to what extent is it an exploration of existing answers?

Recognising these differing types of IBL is not an argument that all IBL should be Authoring activity. Analysis of the curriculum using this lens does serve to highlight however, the nature of the intended student experience. Is it the intention of curriculum designers that students should experience only an identifying form of learning, particularly in the early years? Milleman and Schwinn in their critique of Legal Research and Writing courses in the United States⁶¹ advocated creating a clinical element to these first year courses through using real problems for legal research and writing tasks. In doing so, they recognised the benefits that

⁵⁹ Ibid., 97.

⁶⁰ Ibid, re-ordered to indicate potential development and student autonomy, my contractions and emphases.

⁶¹ Millemann and Schwinn (n 57).

the balance and control of simulated problems used for LRW classes can bring: workable cases without surprises that allow students to incrementally develop pre-determined assessable skills.⁶² However, part of their critique of such cases is that the reverse engineering (designer specifies learning outcomes and develops hypothetical case to generate them) leads to the creation of a limited number of pathways for students to follow (or only one pathway) leading students to find (Identifying) rather than construct (Producing or possibly Authoring) legal arguments.⁶³ Thus the “canned problems” described by Milleman and Schwinn may develop skills but they “discourage creativity. Students learn to trace paths, not to forge them...It casts the teacher as the source of knowledge...and students as “discoverers” of the teacher’s knowledge.”

J. IBL beyond ‘Identifying’ in the Law Curriculum

First year students can undertake inquiries which involve either Producing or even Authoring (open ended questions of their own).

A brief example illustrates this feature:

⁶² Ibid., 441.

⁶³ Ibid.

Task and context	IBL typology – identifying, producing, pursuing, authoring Level of support	experiential role	Factual/ social/ economic/ ethical engagement	Classification Strong/Weak
Students studying English Legal Systems through a lecture/seminar programme were not given a lecture or seminars on the role of the jury trial in the criminal process or the debates surrounding it. Instead they were given the task of playing advisers to a fictitious law commission with a broad question of whether or not to reform the jury trial system and worked on this in a PBL cycle for three weeks, finally presenting a written formal report	Producing. Students inquire into an identified area exploring a range of data sources including commentary, legislation, case law and available empirical research. Students may also choose to compare the English system to others. The recommendations produced may be of varying quality but are likely to be new, containing as they do the students' own recommendations based upon their inquiry. Certainly the students have constructed new knowledge for themselves.	Students experience working in, and managing a group. Students experience presenting in a formal report and oral presentations and the simulated role of adviser to policy makers	Students certainly engage with social and economic issues given the subject matter of the jury trial	Weak classification – the topic involves constitutional and institutional topics as well as elements of criminal law and possibly other jurisdictions Framing is weak but scaffolding is provided through the instruction already provided on the legal system and the PBL process

The inquiry need not be restricted to Producing or to an element of a module however. Colleagues at Northumbria University have recently introduced a module whose objective is to build students' understanding of a variety of Approaches to Law, including a development of their own personal approach.⁶⁴ In this module, the students are given time and support to develop a collaborative and reflective approach to learning. A key project is their own identification of the exploration of a legal issue of their choosing culminating in a poster conference presenting their process and results. The poster conference offers the students the experience of an authentic activity aligned to the experience of the researcher (preparing and presenting the poster) with an audience beyond the tutor and their peers (this year the poster

⁶⁴ Jackson and Hall (in press).

conference was attended by staff from across the school and the winner judged by an external former judge). One of the learning outcomes for students emerging from this exercise is the epistemic awareness they acquire that they cannot fully answer their own open question – tolerating the ambiguity and uncertainty in research.

In second year at Northumbria, students have the opportunity to take this form of IBL a stage further and inquire into a chosen area on which there is currently government consultation and contribute to it. Students have not only contributed in writing but also undertaken visits to the UK Parliament to present their work. This constitutes an Authoring approach to IBL with the potential for real consequences beyond the curriculum. It was partly inspired by approaches in the United States including legal policy clinics.⁶⁵ Contrary to some of those, it is not a capstone module but is integrated earlier in the curriculum, with the intention of building students' mastery and integration of skills at the appropriate developmental stage but also giving them the opportunity to construct knowledge and contribute that understanding beyond the university.

K. Clinical Legal Education as part of the IBL Framework

A fairly typical scenario in clinical legal education is one in which students interview a client about a legal problem which they may not have studied wholly before, or at all. The client's problem will often be complex involving legal, factual, economic, ethical and social dimensions. The role of the clinic supervisor is not to simply provide answers to those issues even were that possible. The tutor provides scaffolds during the inquiry through facilitation of the group discussion concerning the problem presented, through asking questions directed at suggesting potential lines of inquiry, where necessary providing more directed guidance as to areas to explore.

The inquiry the students will need to undertake may seem to fit most easily within the Producing area of the framework. Often the client's problem will be an unstructured and open one posed by the client (although arguably sometimes the problem will involve a relatively straightforward closed question). The student has to investigate the factual issues while also exploring the area of law – this will often be at the level of exploration of secondary materials (textbooks, articles etc.) but may require recourse to analysis of primary sources. Often it may be argued that the task becomes one of Authoring. Although the original question is externally set (the client's problem) it is often in fact the case that the student will need to ask their own open questions in order to reach solutions.

This is not usually building new knowledge in terms of changing our understanding of the law for humankind. Because each client's problem is unique however, the task does require the student to build new knowledge for themselves, their client and their supervisor in relation to the collection of the particular facts and application of legal principles to the particular situation. It is not unheard of for legal precedent to be developed from this clinical work or policy changes to result. Cognitive psychologists might object that complex work in clinic is not how experts work, does not improve problem solving or knowledge acquisition because of this and is therefore potentially counterproductive. Stefan Krieger⁶⁶ provides an analysis of the provision of clinical legal education in the light of this thinking and recommends rigorous instruction in substantive areas of law and procedure prior to clinical work. This author agrees that students should not be expected to learn all that there is to know about a substantive area of practice as the only preparation for entering professional practice through clinic. However, it is the case that almost all new professionals have to undergo a form of inquiry experience in

⁶⁵ William Patton, "Getting Back to the Sandbox: Designing a legal policy clinic" (2011) 16 IJCLE 96

⁶⁶ Stefan Krieger "Domain Knowledge and the Teaching of Creative Legal Problem Solving" (2004) 11 Clinical L Rev 149.

some area of practice that they become engaged in. They do not have the luxury of being instructed on every single area of law and procedure (or other professional activity if they do not become lawyers) prior to engaging in practice. Kreiger's argument is that experts do not follow the route that novices do in inquiry situations because they already have well established schema with which to tackle novel problems. However, new professionals do have to go through these processes of inquiry without which to engage and therefore it is desirable that they have been given the tools and experiences to do so while at university.⁶⁷

L. Part 1 Conclusion: what are the implications for programme design

This paper does not attempt to set out an ideal form or forms of curriculum. However, in the light of the foregoing the following propositions are made:

- Curricula can be designed to integrate the building of knowledge, skills and attributes from the outset
- Curricula can be designed reflecting the role of more direct instruction (strong framing and classification) in building knowledge and understanding
- However, within more direct forms of instruction experiential and inquiry based approaches can play a part in developing students' deeper more holistic understanding of the subjects studied
- Inquiry based and experiential learning approaches can feature heavily from the outset of the learning experience to develop the appropriate skills and mindsets. These can include Producing and Authoring experiences as well as Identifying or Pursuing ones
- Academics and students across the curriculum should understand (and experience) the connections between areas of the curriculum and be involved in Authoring the map of how learning in all areas is connected and related

The second part of this paper is a short case study of a curriculum as intended, enacted and experienced. It will be evident from the foregoing that the first part of this paper has concentrated on the design of the curriculum and features that will inevitably affect its enactment and experience (for example the inevitable impact on the experience that comes from providing a real client problem rather than a simulated one). It is accepted however, that it does not explore in any detail the features necessary to ensure that the curriculum as intended is enacted or experienced. It is not sufficient to simply provide students and academics with a process and expect the intended outcomes. Academics and students require much more than this in the enactment of the curriculum.

III. Part 2 Case study. A Live Client Clinic Module Taking place in an Integrated Curriculum

The purpose of this case study is to assess an "integrated" curriculum and in particular a module within the curriculum as intended in terms of the extent to which the curriculum is integrated or collected, strongly and weakly framed and the part that IBL and experiential learning have to play. It further goes on to explore the curriculum as intended, enacted and experienced by a group of students within a module.

⁶⁷ See Johnny Hall and Kevin Kerrigan "Clinic and the wider law curriculum" (2011) 15 Int'l J. Clinical Legal Educ 25 for further discussion.

This case study focuses on the M Law (Exempting) Law programme at Northumbria University at which the author has worked in various roles since 1998. Since 1992, the University has attempted to integrate the theory and practice of law through a programme integrating these topics across four years. The core element of this case study concerns the Student Law Office Year 4 module which is a final year compulsory module on M Law programme. Approximately 150 final year students take this module. The case study took place in 2014, following which the M Law curriculum was revised, with further emphasis on IBL approaches in the earlier years of the degree.

Following successful completion of the programme students gain the following qualifications:⁶⁸

1. A Qualifying Law Degree (QLD) meeting the requirements of the Joint Statement on the Academic Stage of Training Issued by the Law Society and the General Council of the Bar.⁶⁹ Passing the Academic Stage of Training via the QLD is one of the most utilised routes into the legal profession and the vast majority of English and Welsh Law Degrees are QLDs. The QLD specifies foundation subject areas of Legal Knowledge together with more general knowledge and understanding of the law and general transferable skills (rather than specifically those required in the legal profession).
2. Exemption from the Legal Practice Course (LPC). This is the vocational study stage of legal qualification focusing on procedural knowledge and legal skills. Most students in England and Wales study first a QLD and then an LPC.⁷⁰ Exemption was also available from the Bar Practice Qualification (for the sake of brevity and clarity the LPC is the focus of this paper).
3. A Masters level qualification.

This curriculum might be said to be an Integrated curriculum where the contents stand in an open relation to each other.⁷¹ It was the intention when the curriculum was designed that it should do so. The then Lord Chancellor's Advisory Board on Legal Education and Conduct recommended the Northumbria model as a means of integrating substantive knowledge with professional skills and values.⁷² To achieve this, in first year students not only studied some of the foundation areas of law including criminal law but alongside this studied for the Legal Practice Course module concerning criminal litigation and evidence. The tutors for the criminal and Legal Practice Course modules often utilised the same case studies and students in practical workshops and assessments were expected to apply their knowledge of substantive criminal law and begin to learn professional skills and values at the same time. A similar course of study took place in second year with Tort, Litigation and Evidence as a combined module. In third year, students encountered a range of LPC areas (Business Law and Conveyancing for example) but the modules were expanded from their LPC required core practical areas in an attempt to include greater examination of substantive legal issues. These were studied

⁶⁸ The qualification route for solicitors, and to a lesser extent barristers, is the subject of major "reform." These reforms are not the focus of this paper.

⁶⁹ The Law Society and General Council of the Bar, "Joint statement on the academic stage of training" (Solicitor Regulation Authority, 1999) <www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page> (accessed 20 March 2018).

⁷⁰ Solicitor Regulation Authority, "Legal Practice Course Information Pack" (25 July 2017) <www.sra.org.uk/students/resources/legal-practice-course-information-pack.page> (accessed 20 March 2018).

⁷¹ Bernstein (n 6) 83.

⁷² Lord Chancellor's Advisory Committee on Legal Education, "First Report on Legal Education and Training" (April 1996) available at <<http://193.62.18.232/library/archives/ukcle/78.158.56.101/archive/law/resources/he-policy/aclec/index.html>> (accessed 20 March 2018). Note the report is incorrectly labelled as "continuing professional development of solicitors and barristers".

alongside more traditional academic options and preparation for live client clinic in a module incorporating both experiential simulated legal work alongside study of the substantive law involved in the problem utilising PBL. In final year students studied both academic options or options more closely aligned to LPC options alongside the live client Student Law Office module (discussed further below) and a traditional dissertation. Throughout the degree, there were experiential learning opportunities in the form of simulation based contentious and non-contentious legal work together with skills development concerning advocacy, interviewing, presenting and drafting.

With some exceptions, however, the curriculum was largely a Collected one⁷³ in which subjects stood in closed relation to each other and remained strongly classified.⁷⁴ Subjects, even where 'integrated' were taught in closely defined units of time, tutors were subject specialists who did not, on the whole, co-teach across modules and there were usually strong boundaries between the subject areas.

The dominant model of learning was the lecture problem seminar model in which, predominantly, the lecture explained legal issues and seminar problem questions were then designed to enable the students to further understand the issues by applying simplified factual scenarios to them in discussion with fellow students and the tutor. The programme was therefore, in the main, characterised by strong framing and, with the exception of the dissertation and Student Law Office modules and some aspects of learning on other modules, did not heavily feature aspects of IBL.

A. The SLO Year 4 module

This module is a 60 credit module (30 credits ECTS equivalent in Europe, in the UK 60 credits is usually 50% of the final year of an undergraduate degree). It is modelled on live client clinical legal education which was principally established first in the United States. Students work in a real legal environment in which they are responsible in pairs for client cases. Students establish a lawyer-client relationship, research, advise and progress the case. Students are placed into 'firms' of six students (for example civil or employment) and work on cases in those areas supervised by a solicitor who specialises in that area.

70% of the grade is based upon the students' performance throughout the year measured by the supervisor against assessment criteria. It is a continuous form of assessment – with grading taking place at the end of the year when the supervisor considers the student's overall performance against the assessment criteria. 30% of the grade is based on written pieces of reflection concerning the student's own personal development and their reflections upon wider societal issues.

An overview of the curriculum appears in the module descriptor:

The module aims to bring together practical and academic understandings of law to enable students to develop higher level practice skills, underpinned by the ability to critically evaluate both their own performance and the role of Law in society.

Students not only develop the workplace skills to work effectively as legal practitioners, but are also able to bring their legal knowledge to solve problems in a systematic and creative manner.

⁷³ Bernstein (n 6) 79-80.

⁷⁴ Bernstein (n 6) 88.

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Through this module students develop the qualities needed for employment by showing the development of sound judgment, personal responsibility and initiative, and an understanding of the nature of professionalism and of personal service.

Table 4 Mapping the Learning Outcomes against the new QAA subject benchmark for law

Student Law Office Assessment Handout Description of Criteria	QAA benchmark⁷⁵ References are to subsections of section 2.4 – what a law graduate with honours has demonstrated
Autonomy will include:	
the ability to identify and apply law with accuracy	Ability to apply knowledge and understanding (x) Intellectual independence (i)
the ability to plan and progress client cases	Elements of Self-management (ii)
demonstration of a professional commitment to the client's best interests	Elements of Awareness of principles and values of law and of ethics and justice (iii)
efficiency in managing the case	Elements of self-management (ii)
Ability to learn will include:	
the ability to recognise areas of weakness and to make good these weaknesses	Elements of intellectual independence (i) Engagement with personal and professional development (xii)
the ability to build on existing areas of strength	Elements of intellectual independence (i) Engagement with personal and professional development (xii)
the ability to reflect effectively on experiences and to relate those experiences to their wider academic, professional and societal contexts	Elements of self-management (ii) Principles and values of law and justice (iii) Knowledge and understanding of principles and rules of public and private law within institutional, social and national contexts (iv) Engagement with personal and professional development (xii)

B. Classification

By opening the door of the classroom to problems that present themselves externally, control of the content of the curriculum itself is changed. Neither teacher nor student have complete control of the legal, procedural or social problems that both will work upon. Classification is therefore usually weak. Table 5 shows an example of one case in the author's firm. No actual details relating to the client's case are identified here beyond those publically available. It indicates the extent to which boundaries between traditional subject areas overlapped and alongside the issues in the case. The author indicates where they might have been encountered in a traditional law curriculum. The case involved a death in police custody following arrest:

⁷⁵ Quality Assurance Agency (n 10)

Table 5 Example of a case in the Student Law Office

Acting for the relatives of a man who died in police custody involving potential breaches of Police Powers and Duties, Tortious liability, breaches of Human Rights, Procedural investigation of the death. This case took place over a number of years due to the nature of the process involved in such cases

Area of law	Possible coverage on an English law degree	Possible coverage on a Legal Practice Course
Police powers and duties to relating to custody in the police station	Public Law	Criminal Litigation
The right to life under the European Convention	Civil Liberties/Human Rights courses/general coverage in English Legal System	Possible specialist option
Procedure for civil dispute resolution	Overview in English Legal System	Civil Litigation but not at this specialist level
Coroners' Inquests	Not covered unless in a specialist option	Not covered unless in a specialist option
Police Disciplinary Regulations	Not covered unless in a specialist option on policing	Not generally available
The role of the then Independent Police Complaints Commission	Not covered unless in a specialist option on policing	Not generally available

C. Strong/Weak Framing

Students spend 10-15 hours per week working in the office. Formal contact time with the tutor is limited to one hour firm meetings of all six students with their supervisor per week. Students organise their own time to conduct their cases; checking with the supervisor when ready to do so. Ultimately, particularly in relation to the facts of cases, the complexity of real world situations means that students have to take much of the responsibility for the receipt and transmission of knowledge.

In addition, neither supervisor nor student are entirely free to control knowledge transmission because the need to provide a professional service to the client places limits on the process. Within this, however, there is at times relatively weak framing. In the SLO, there is little if any formal didactic teaching of content. Students, with some guidance from their supervisor, have to determine, through research, the knowledge and understanding required.

The provision of a real legal service introduces the requirement to ensure that the process is overseen by a qualified lawyer. The lawyer has to judge that the service is competent. Within this environment, students can make mistakes, explore options and learn from experience but final action on a client's case does not take place without approval. In this sense, framing is strong.

Given the weak classification in this Integrated curriculum and strong/weak framing it might be argued that the following outcomes identified by Bernstein might exist:

- Emphasis upon ways of knowing rather than states of knowledge⁷⁶

⁷⁶ Bernstein (n 6) 83.

- The status and rights of students are increased⁷⁷

D. Inquiry Based Learning and the Student Law Office Year 4 module as intended

Clinical Legal Education is approached in different ways across the UK and internationally. Within the live client mode, many clinical programmes contain explicit instruction on the legal area that the clinic involves either before or at the same time as students are undertaking clinical work. This approach may well be due to the necessity to ensure that students can work competently and within urgent timelines and avoid the problems of cognitive load described for example by Kreiger.⁷⁸ These approaches inevitably have implications for the extent to which students are involved in IBL. This case study is concerned only with the author's practice in Northumbria's Student Law Office work as an illustration of the possibilities for IBL within clinical legal education and understanding the gaps between the curriculum as intended, enacted and experienced.

Utilising Levy and Petrulis' conceptual framework for IBL,⁷⁹ analysis of the example of the death in police custody given above in Table 5 provokes some interesting insights. It should be noted in advance that as well as the areas of law indicated above, students would have to gather data from a number of sources including the client, witnesses, the Independent Police Complaints Commission and the Coroner. The inquiry necessary by the students therefore includes obtaining and analysis of data not yet obtained and known by anyone (principally the client's knowledge, feelings and wishes) and analysis of data already collected by others (for example the police and Independent Complaints Commission). As indicated by Table 5, the students will have some prior knowledge of some of the legal areas involved but will also have to carry out substantial research in order to understand the area of law and apply the data gathered. This inquiry mirrors much of the inquiry necessary for both academics and professionals faced with new, for them, areas of law to enquire into (although see discussion concerning the work of Kreiger re: the ways in which novices and experts approach problems) including research and interpretation of legislation, case law and a range of commentary sources from textbooks to articles to existing research. The approach might be viewed as Producing as the client's open ended questions might be as broad as "how did my relative come to die, who is responsible, will they be punished and how can this be prevented in future." This is not inquiry in the pursuit of creating new knowledge for human kind (though note that on occasion novel legal argument and even precedent is established by law clinics including the Student Law Office). It is however, not simply seeking an answer to an already existing answer of a closed question. In some ways therefore the work might be viewed as Pursuing rather than Identification. The student is seeking to explore a problem framed by the client in interaction with a knowledge base – answering an open question and establishing new knowledge in this particular circumstance. The level of support from the tutor and students is at the lower end of the scale usually with support provided through discussion of the research conducted, questions and prompts to explore further rather than the provision of "an answer".

E. Curriculum as Enacted

The curriculum as intended does not necessarily represent what is actually taught. In order to investigate this Clinical Legal Education module as part of the IBL Framework the author decided to film a typical one hour firm meeting in the SLO that was conducted. Although scheduled for one hour, these firm meetings typically last for up to two hours due to the need

⁷⁷ Ibid.

⁷⁸ Kreiger (n 66).

⁷⁹ Levy and Petrulis (n 58).

to deal with both practical and pedagogical issues. This particular firm meeting lasted 88 minutes.

F. Ethical issues

Students participating in the research gave informed consent. The cases being discussed in the firm meeting are real cases and subject to a duty of client confidentiality. To protect client confidentiality, the excerpts of conversations have been summarised and the facts converted to different but similar scenarios to prevent disclosure of the precise problem, legal issues and advice.

G. Formative Assessment

In exploring the curriculum as enacted, formative assessment becomes particularly important. “Formative assessment is seen as taking place when teachers and learners seek to respond to student work, making judgments about what is good learning with a view to improving that learning.”⁸⁰

In the Student Law Office regular feedback is given by tutors in the learning process. Student Law Office firm meetings have formative (and summative) assessment embedded within them, as partially advocated by Shepard.⁸¹ This is partly because the summative assessment is a continuous form of assessment by the supervisor (and indeed contains an explicit reference to contribution to firm meetings).

This study of a firm interaction asks whether the formative assessment taking place is aligned with these aims. I reproduce here the first interaction with student S5 concerning the case she was working on in the light of Torrance and Pryor’s⁸² distinction between convergent and divergent assessment (See Appendix 1 for this inventory). With convergent assessment, the teacher has predetermined something they wish to test if the student is able to do or know and the assessment is an attempt to test that. In classroom interactions this is often characterised by the Initiation-Response-Feedback pattern. Divergent assessment by contrast is more a conversation in which teachers and learners might initiate dialogue. Questions posed are more about what has been done and why rather than testing. Feedback is aimed at prompting further engagement rather than correcting mistakes.

A study in Further Education indicates the dangers of transparent assessment criteria coupled with rigorous convergent assessment: “far from promoting an orientation towards student autonomy...probably help to produce students who are *more* dependent on their tutors and assessors.”⁸³ That is not to say that convergent assessment necessarily represents bad practice. Torrance and Pryor⁸⁴ identified convergent and divergent assessment as the two ends of a continuum. Convergent assessment can enable the learner to be scaffolded to achieve what they cannot do alone and a constant balancing act between the two types may represent the ideal.

⁸⁰ Pryor and Crossouard (n 16)

⁸¹ Lorrie Shepard, *The Role of Classroom Assessment in Teaching and Learning*, (CSE Technical Report 517, Centre for the Study of Evaluation, Standards, and Student Testing, University of California, 2000)

⁸² Harry Torrance and John Pryor, *Investigating Formative Assessment. Teaching, Learning and Assessment in the Classroom* (Buckingham: Open University Press, 1998).

⁸³ Harry Torrance “Assessment as learning? How the use of explicit learning objectives, assessment criteria and feedback in post-secondary education and training can come to dominate learning” (2007) 13:3 *Assessment in Education: Principles, Policy & Practice* 281.

⁸⁴ Torrance and Pryor (n 82); Harry Torrance and John Pryor, “Developing formative assessment in the classroom: using action research to explore and modify theory” (2001) 265 *British Educational Research Journal* 615.

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The author analysed the video in terms of the strength of classification and framing in the lesson and the degree to which the QAA benchmark outcomes were present to identify the extent to which the curriculum was being enacted. This full analysis is illustrated via an excerpt using interaction over the first case. The pattern of interaction with the students over the other cases did not differ markedly from this first interaction which does to a large extent represent much of the practice throughout the session.

S4 and S5's case involved a legal issue which was novel for the students and which the author had a working knowledge of but was not an expert in. Therefore, the students having done research into the legal issues had gone with their conclusions to another member of staff specialising in this area of law. The author had also separately discussed some of the issues with the expert member of staff. This is an example of the weak classification persisting in the module with specialists across disciplines involved in the student learning.

Table 6 Excerpt Analysis of Firm Meeting

Action	Divergent or Convergent	Student Law Office Assessment Handout Description of Criteria	QAA benchmark ⁸⁵ References are to subsections of section 2.4 – what a law graduate with honours has demonstrated
JH asks S5 to explain their case to the other tutor who is new to the case.		Autonomy	Intellectual independence
S5 commences an explanation which JH considers to be a narrative of the facts without explicit application to the necessary legal issues. In order to try and help the student explore the nature of the case more coherently: JH “what are the particular legal issues here”	Divergent. An attempt to focus on the students’ miscue. To encourage them to focus upon legal issues and organise the presentation more effectively for the listener	the ability to identify and apply law with accuracy the ability to plan and progress client cases	(i) Study in depth and context substantive areas of law (v) Ability to apply knowledge and understanding to offer evidenced conclusions addressing complex actual problems (x) Ability to communicate orally (xi)
S5 begins to set out the legal issues			
JH interrupts “you said there was	Convergent. Focusing upon particular knowledge and		

⁸⁵ Quality Assurance Agency (n 10)

misrepresentation. How would we establish that?"	understanding expected of the student in a more IRF sequence		
S5 seems unsure as to one of the legal issues – but JH himself is not sure JH “why don’t you look again at the written contract”	Divergent. Focuses on the student miscue and sets an open task focused on helping the student (and the supervisor) to understand rather than testing		
S5 begins to explain complex contractual law relating to electronic agreements. JH think the other tutor in the room may be finding this hard to follow. JH “Why are you concerned about what’s in the contract?”	Divergent. An open question intended to prompt the student to explore the background before exploring the more complex law she has researched.		
S5 explains in-depth that her research and conversation with another expert indicate that the particular format of this contract is binding even if the person signing only sees the front page of the screen and not the terms and conditions hidden behind it			
JH “what do you think about the fact that you might not have your attention drawn to it?” S2 queries whether the front screen would show the page numbers S5 answers the query	Divergent. Open task with questioning by supervisor and students directed at helping rather than testing. Part of an ongoing dialogue between and amongst learners and teachers where learners initiate as well as respond, ask questions as well as reply		
JH does this appear fair and just?	Divergent. Open task with questioning by supervisor directed at encouraging the students to consider the role of the law in society.	the ability to reflect effectively on experiences and to relate	Awareness of principles and values of law and justice (iii)

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<p>S1 “is it a floodgates argument?”</p> <p>S5 “it’s for certainty....”</p> <p>S2 “it you’re acting like as a business the courts would say you should be more aware to look at terms and conditions.”</p>	<p>Divergent. Part of an ongoing dialogue between and amongst learners and teachers where learners initiate as well as respond, ask questions as well as reply.</p> <p>It is also interesting here that S5’s point about certainty is not one the supervisor was immediately thinking of</p>	<p>those experiences to their wider academic, professional and societal contexts</p>	<p>Principles and rules of public and private laws (iv)</p>
<p>JH “do you think he should defend it at court?”</p>	<p>Divergent. Open question intended to enable the students to explore all of the issues and put forward their own views</p>		<p>Ability to apply knowledge and understanding to offer evidenced conclusions addressing complex actual problems (x)</p>

This excerpt typifies the interaction throughout the session. It is apparent from this that a broad range of learning outcomes are being explored and that these are not limited to knowledge and understanding, or even those outcomes linked to professional competence. Throughout the session the students and the author were also exploring a range of learning outcomes.

As can be seen, at times the author was focusing upon the student coming to understand more about the case for themselves by questions which prompted the student to engage more coherently with the facts and law involved. However, at other times the feedback was more convergent. The fact that these are real cases also leads to the necessity to ensure that students are giving accurate advice in a timely manner. While the firm meeting can often be about giving the student power to learn for themselves, the need to provide this professional service can also drive stronger framing and convergent assessment. The students are not entirely free to discover their own understanding of the law and the situation of their clients.

There is also evidence in the video that despite the stated aims of the curriculum, the session is more strongly framed than is intended. Throughout the entire 88 minutes (and as typified by the above excerpt), the firm meeting’s agenda and flow of the conversation is controlled by the author.

Analysis of the conversation reveals the interaction is predominantly Teacher-Student-Teacher. This has been identified by McHoul⁸⁶ as characterising much of classroom talk. Given that social interaction is important for the construction of knowledge⁸⁷ this is disappointing. There is little opportunity for exploratory talk to develop as described by

⁸⁶ Alexander McHoul, “The organization of turns at formal talk in the classroom” (1978) 7 *Language in Society* 182.

⁸⁷ Michael Chapman, “The Epistemic Triangle: Operative and communicative components of cognitive competence” In: Michael Chandler and Michael Chapman (eds), *Criteria for competence. Controversies in the Conceptualization and Assessment of Childrens’ abilities* (Hillsdale: Erlbaum, 1991).

Mercer⁸⁸ in which students might be able to build knowledge and investigate issues cooperatively with the supervisor.

H. The Curriculum as experienced

The approach to investigating the curriculum as experienced was to focus upon the students' wider perceptions of what they had learned from their time in the Student Law Office. The students were asked to prepare seven minute presentations on these aspects. Finally they were asked one further question about what they had learned about learning from experience.

Analysis has been performed by viewing the video and reviewing the extent to which the students' views appear to indicate they are experiencing aspects of the learning outcomes as identified in the module descriptor and the Learning outcomes identified by the QAA benchmark.

Table 7 Excerpt of Analysis of Student-Tutor Discussion of the Student Law Office Module

Student	Statement or summary of statement	Student Law Office Assessment Handout Description of Criteria	QAA benchmark ⁸⁹ References are to subsections of section 2.4 – what a law graduate with honours has demonstrated
S4	"I've drawn meaningful experience from Mr [x]'s case because it's enabled me to gain an understanding of the frustrations and feelings that clients can encounter... what's taught academically and wrote in textbooks is often very difficult from what's encountered by clients in reality because what a client's problem often requires something beyond the rules."	professional commitment to the client's best interests Ability to reflect effectively on experiences	Recognise ambiguity and deal with uncertainty in law (viii) Engagement with own personal and professional development (xii)
S3	"constant feedback in the student law office. I always get feedback whether it's in firm meetings or through amendments on letters and this is beneficial because it allows you to constantly improve"	Ability to learn	(xii as above) Willingness to acknowledge and correct errors (ii)
	In the classroom "you don't really think about the impact it can have on the person"	professional commitment to the	(xii as above) Knowledge and understanding of

⁸⁸ Neil Mercer, *Words and Minds*. (Routledge, 2000). Also, see, Neil Mercer, "Sociocultural Discourse Analysis: Analysing Classroom Talk as a Social Mode of Thinking" (2005) 1:2 Journal of Applied Linguistics 137.

⁸⁹ Ibid.

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		clients' best interests Ability to reflect upon experiences	theories, concepts, values, principles within..social context..(iv)
S1	"it's not always going to be written down for you. Sometimes you've got to take ideas from here and ideas from there"	Autonomy Ability to identify and apply the law with accuracy	Intellectual independence (i) Ability to conduct self-directed research (vi)
S1	"In contrast with ordinary courses, clinic is the first time there is consideration of whether clients can access justice as opposed to whether or not they have a good case."	professional commitment to the client's best interest Ability to reflect effectively on experiences	Awareness of principles and values of law and justice (iii)
S4	"The very first advice interview that we did went horr- like it went really wrong and I was just determined that the next one would go well...I watched the DVD back of that and I was like making notes on a lot of the things that I thought was bad about it and thinking about how I could improve and like I needed to prepare more in my advice but I needed to be able to improvise when clients were asking questions...I'd have to chill out a bit more and not panic.. that it was ok as well not to have an immediate answer"	Ability to learn	An ability to reflect on their own learning (ii) Ability to communicate orally (xi) Engagement with their own personal and professional development (xii)
S4	"you feel more comfortable here. Like if I was doing it in practice and I was on my first day as a trainee solicitor... I wouldn't even know if it would be appropriate to talk it over with another person whereas here you have students like all of these [gestures to four other students in the room] I can come and talk to you [JH] about it."	Ability to learn	An ability to work collaboratively (ii)

All of the students agreed upon two things (illustrated in the above excerpts):

1. The experience gives them confidence in their own ability and self worth: “Implants a sense of achievement and a sense of identity” (S1)
2. The experience has given them the conscious desire and tools to learn from their own experiences.

I. Part 2 Conclusions – a reality check

One of the clear issues emerging is that the benefits of some of the SLO learning experiences ought to be available to students earlier. This becomes even clearer when one considers how often the students indicated in the firm meeting that they were encountering valuable learning experiences for the first time. The M law in 2014 was too strongly classified and framed to allow students to fully realise their potential as learners. The curriculum was redesigned partly to enable experiences throughout the curriculum that would enable this.

The Student Law Office curriculum as intended, enacted and experienced does appear to possess many of the elements necessary to equip the students for legal practice and life in its broadest sense. Analysis of the firm meeting does, however, raise questions about whether interactions between the students and supervisor could be improved in order to truly allow for co-creation of knowledge and identity by students and supervisor. It is worth noting that 15 supervisors teach on the module. While not the object of this study, their curriculum orientations could have a profound effect upon the curriculum as taught.

A study in United States of 308 school teachers⁹⁰ considered the relationships between a teacher’s beliefs and five major theoretical curriculum orientations. Contrary to earlier research⁹¹ the study revealed that teachers’ beliefs were often practically opposed to theoretical curriculum orientations. Jenkins questions whether the difference between curriculum policy and teacher’s beliefs might have significant practical implications, particularly for student outcomes. It is interesting that while the author’s own beliefs are explicitly well aligned to the module’s orientation, the practice in the firm meeting is characterised by more of the power vesting in the author than the students and more than was intended.

IV. Final Recommendations

Curriculum designers can:

1. Develop students’ knowledge of research process and legal principles from the outset and involve them in the process.
2. Provide students with the opportunity to ask open questions and carry out their own inquiries and make real contributions to knowledge.
3. Give opportunities for experiential learning appropriate to the students’ development through:
 - a. The organisation of the collaborative inquiry amongst the group which is an experiential task that can be reflected upon;
 - b. Reflection on the process of the inquiry and learning from the research process to assist in building self-directed learning skills;

⁹⁰ Sharon Jenkins, “Measuring teacher beliefs about curriculum orientations using the modified curriculum orientations inventory” (2009) 20:2 Curriculum Journal 103.

⁹¹ Derek Cheung and Hin-wah Wong, “Measuring teacher beliefs about alternative curriculum design” (2002) 13 The Curriculum Journal 225.

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- c. Presentation of the results of the inquiry can and should be experiential – ally the experience to a mode most appropriate – a poster conference for example.
4. Provide elements of the curriculum which are more strongly classified and framed to enable students to build schema of principal areas. Arguably subjects such as contract law lend themselves to this.
5. In those areas which are more strongly classified and framed, consider how inquiry based and experiential approaches might feature in those areas and how the domain knowledge gained in those areas can be called upon by students in more inquiry based activity.

In integrating the curriculum, the author agrees with the conclusions of some of those in the US reflecting on the curriculum in that jurisdiction: “Truly it is hard to ask students to start learning to move about the whole legal structure when they have only just learned the location of the rooms and the names of the furniture. But we think the greater fear is that, if we do not make the effort to challenge students in this way, students will learn to think of the legal system as only so many rooms, so many pieces of furniture, that they can never reorder...our society is full of new problems demanding new solutions, and less so than in the past are lawyers inventing those solutions. We think we can, and ought to do better.”⁹²

⁹² Todd Rakoff and Martha Minow, “A Case for Another Method” (2007) 60 Van. L. Rev. 597, 607.

V. Appendix 1 Convergent and Formative Assessment as adapted by Pryor and Croussard (2008)⁹³

Convergent Formative Assessment	Divergent Formative Assessment
Assessment which starts from the aim to discover <i>if</i> the learner knows, understands or can do a predetermined thing. This is characterised by:	Assessment which starts from the aim to discover <i>what</i> the learner knows, understands or can do. This is characterised by:
a. precise planning by the teacher and an intention to stick to it;	a. flexible planning or complex planning which incorporates alternatives;
b. recording via check lists and can-do statements;	b. open forms of recording (narrative, quotations etc.);
c. closed or pseudo-open teacher questioning and tasks;	c. primarily open tasks with questioning by teachers and learners directed at 'helping' rather than testing;
d. a focus on contrasting errors with correct responses;	d. a focus on miscues—aspects of learners' work which yield insights into their current understanding—and on prompting metacognition;
e. authoritative, judgmental or quantitative feedback;	e. exploratory, provisional or provocative descriptive feedback aimed at prompting further engagement from the learners;
f. feedback focussed on performance and the successful completion of the task in hand;	f. discussion prompting reflection on the task and its context with a view to constructing understanding of future situations in which new knowledge might be applied;
g. formative assessment focused on communicating criteria usually closely related to those used in summative assessment;	g. formative assessment focused on a holistic view of criteria, the learners' understandings of them and how they fit into wider notions of knowledge and competence;
h. involvement of the learners as recipients of assessments;	h. involvement of the learners as initiators of assessments as well as recipients;
i. an analysis of the interaction of learners and the curriculum from the point of view of the curriculum;	i. an analysis of the interaction of learners and the curriculum from the point of view of both learners and the curriculum;
j. conforming to either a behaviourist or a constructivist view of education;	j. conforming to a socio-cultural view of education with an acknowledgement of the importance of the context for the assessment;

⁹³ Pryor and Croussard, (n 16)

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k. an intention to teach or assess the next predetermined thing in a linear progression;	k. an intention to teach in the zone of proximal development;
l. an interaction usually embedded within an Initiation-Response-Feedback (IRF) sequence;	l. part of an on-going dialogue between and amongst learners and teachers where learners initiate as well as respond, ask questions as well reply;
m. a view of assessment as accomplished mainly by the teacher.	m. a view of assessment as a collaboration between and amongst teachers and students.